

EXCERPTS
PLANNING AND ZONING COMMISSION MEETING
COLUMBIA CITY HALL COUNCIL CHAMBER
701 EAST BROADWAY, COLUMBIA, MO
November 7, 2024

Case Number 260-2024

A request by A Civil Group (agent), on behalf of Dan and Audrey Barraco (owners), seeking approval to rezone 4.82 acres from R-1 (One-family Dwelling) district to the R-MF (Multiple-Family Dwelling) district. The subject property is addressed as 4414 Smith Drive and is directly south of the intersection of Dayspring Drive and Smith Drive.

MS. GEUEA JONES: May we please have a staff report?

Staff report was given by Mr. David Kunz of the Planning and Development Department. Staff recommends approval of the R-MF zoning map amendment.

MS. GEUEA JONES: Thank you. Before we go to questions for staff, if any of my fellow Commissioners have had contact with parties to this case outside of a public hearing, please disclose so now. Seeing none. Questions for staff? Commissioner Placier?

MS. PLACIER: Yeah. I noticed the letter that we have from one of the residents of the R-1 to the south seems to be perturbed by the fact that this would be viewable from their house. Is there any requirement for any kind of buffering between this and that R-1?

MR. KUNZ: Yes. There is a level one buffer, if I'm remembering correctly, because this would be a residential use buffering next to R-MF zoning, so that would be a level one buffer, which is a six-foot screening device.

MS. PLACIER: Okay.

MS. GEUEA JONES: Commissioner Loe?

MS. LOE: And because it's a zoned multi-family use, it would also be subject to the neighborhood protection standards because it's going in next to a single- or two-family use. So that requires -- it increased the side and your set rear yard setbacks by ten feet and requires stepping down the building portion within 25 feet of the side or rear lot lines to a maximum of 24 feet. So the building has a set down and they have to pull it in more.

MS. GEUEA JONES: Any other questions for staff? Commissioner Williams?

MR. WILLIAMS: Since it's not plotted, you had mentioned it may not need to come back through for approval. There's a variety of uses that are permitted for R-MF. Are there any -- like, what are the circumstances that would require it to come back through the Commission before its development was approved? So, for instance, you showed one single building of apartment complexes. If there were multiple buildings of apartment complexes placed on the site, would that require it to come through?

MR. KUNZ: If they wanted to put these structures on independent lots, then, yes. They would have to preliminary plat, if I'm not incorrect, in which case it would be seen by the Planning and Zoning Commission. However, you would be able to build multiple structures all on one lot if it's under -- I guess if they elect to stay under one owner.

MR. WILLIAMS: Thank you.

MS. GEUEA JONES: Commissioner Loe?

MS. LOE: Commissioner Placier, just to clarify. For building height and neighborhood protection standards, it's one of the two, so they either have to pull it back, I think, over 30 feet, or step it down.

MS. GEUEA JONES: Any further questions for staff? Seeing none. We will go to public comment.

PUBLIC HEARING OPENED

MS. GEUEA JONES: Please come forward, state your name and address for the record. Six minutes for a group and three minutes for an individual.

MR. GEBHARDT: Good evening. My name is Jay Gebhardt; I'm a civil engineer with A Civil Group. I'm here tonight representing Dan and Audrey. I really don't have anything to add to the staff's report. I'm here to answer questions, so I don't think I'll take my six minutes.

MS. GEUEA JONES: Thank you. Any questions for the engineer? Commissioner Williams?

MR. WILLIAMS: Since the last time that you were here with this proposal, have -- I know it's changed since then, but have you had any further conversations such that you could provide the Commission with information on what you expect would be built here if it was rezoned?

MR. GEBHARDT: No. And the situation hasn't changed other than that we were turned down at Council for the M-OF, but the Barracos still will own the property. They will not develop the property. They will sell it someone who will. So I think it would be disingenuous for me to say that this is -- I don't know what it will be. So I think you have to make your decision based on what's allowed in the R-MF district.

MR. WILLIAMS: Thank you. I appreciate your candor in that.

MS. GEUEA JONES: Any further questions for this speaker? Commissioner Stanton?

MR. STANTON: I was looking for something to start a fight and I can't find one, Mr. Jay.

MS. GEUEA JONES: Anyone else? Seeing none. Thank you very much, Jay.

MR. GEBHARDT: Thank you.

MS. GEUEA JONES: Anyone else to speak on this case tonight? Okay. In that case, we will close public comment and go to Commissioner comment.

PUBLIC HEARING CLOSED

MS. GEUEA JONES: Any Commissioner comments? Commissioner Stanton?

MR. STANTON: Well, we've seen this case before. It was a pretty lengthy battle the last time it was in front of us. It looks like this family has taken better counsel this time. I plan to support this, you know. He's doing what it's in his purview as a landowner and so I think this is a better fit than what he

was asking for before. I think he got better counsel or did some homework or something, and I plan to support his efforts.

MS. GEUEA JONES: Commissioner Ortiz?

MS. ORTIZ: Yeah. So this is one of the -- one of the, I guess, cases that I was looking at when I applied for P & Z, and it was very exciting to read so much comment. But I'm excited that this has come back quickly, and I also plan to support the R-MF, so --

MS. GEUEA JONES: Any further Commissioner comments? Commissioner Williams?

MR. WILLIAMS: I do not share the enthusiasm of my fellow Commissioners. I'm going to read into the record what I read last time, including with its less than full sentences at times. So under Missouri law, the burden is on individuals seeking rezoning to show that the current zoning is unreasonable. And I won't go through every factor in that, but one of which is the property value of -- you know, the value of the property, and I certainly -- I can understand your comments regarding the property value being less for R-1, particularly given that it sits on a road that has become increasingly busy and looks out towards what is now a commercial space. So the balance there is that we have to look at -- so there's a detriment to you if we don't approve it. We have to balance that out against the public. The counter side to that is the public doesn't include just the neighbors there, so if the abutting property owners are against it, that's not a de facto reason because the abutting property owners don't speak, are not representative of the public as a whole. So that's the weighing out that we have to do. And saying that, just for the record, that these are the factors that we have to -- to consider. And when I look at this, I see on the positive side for the request that there is the surrounding zoning districts along Smith and Scott that would be reflective of a commercial use. This is the lighter commercial use than those, so that certainly weighs in favor of it. The property value aspect I mentioned weighs in favor of it. It's a lighter use, so it's a step-down that weighs in favor of it, and it's also with -- consistent with the neighborhood district designation for Columbia Imagined. On the flip side, we have seen that there's some distinguishment between what's being requested and what's around it, so the M-C and M-N that are around it have natural boundaries by the creek which creates a greater setoff than would be present for this property if it was rezoned. And everything that's on the south side of Smith is R-1 except for those properties which have a natural setoff. We have to consider the neighboring property values. I do think, you know, a 25 or maybe it's increased rear yard and, you know, space between the boundary, the rear boundary of the property and a 35- or 45-foot-tall building isn't a great deal of distance when you think about the spacing there. And I've heard numerous individuals from the public who live in the area, who do not live immediately abutting the property, state that they are concerned about traffic because traffic is already an issue with congestion from the development on the north side of Smith Drive, and particularly as it gets closer to Scott Boulevard and the location of the subject property would be very close to that already congested intersection. And so it would add -- well, currently, there is no left-hand turn to any commercial business. It would add a left-hand turn to the south, whereas right now, all of the traffic is at least heading to the north into that commercial property. So those are the things that I'm looking at and weighing out, and that

leads me to believe that this is a fairly debatable position as to whether or not this is a proper request. So for me, the up or down comes to there's no current plan, and that means that whether this is up or down, or you told me suddenly that you were going to change it and it was going to be R-MF, there's still no plan. And given the counter balancing, I have concerns that that's just not equitable for the residents and property owners around both of the abutting ones concerned about their property value and perhaps more distant neighbors concerned about the street. So in my view, weighing out the different factors, my weighting goes to voting no regardless of how it's zoned, whether it's the City's proposal or the applicant's proposal, because I don't think it's proper given what we've heard to rezone this without a development plan presented to us. And so my opinion remains the same as that if I'm being tasked with balancing out the conflicting interests of the public versus the landowner, I can't adequately evaluate the interest of the public because I don't know what's going in here. And there's a lot of things that can fit into R-MF. You could decide to subdivide this and have individual houses. You could decide to make duplexes. You could decide to put a large amount of apartment complexes in there. Now none of those things are -- are good or bad inherently, but they do -- they are different, and they do change the neighborhood, and they do affect the neighboring properties in the surrounding area differently. And they also impact what the goals are of Columbia Imagined differently. And so I feel like in a commercial way, it would be feasible for you to have a -- to come to the Commission with a plan for how this would be developed with someone who is -- a developer who is interested in purchasing the property on the condition that it be rezoned. And so particularly with -- again, the opposition we heard the first time, my view is that balancing out the factors that we have to consider, I can't balance it out without knowing what's going to go there and how it's going to affect the public, good or bad. Thank you.

MS. GEUEA JONES: Commissioner Brodsky?

MR. BRODSKY: I apologize. I'm going to ask some questions of staff. I'm still getting my sea legs as a Commissioner. The height of this building, it can be a maximum of 35 feet?

MR. KUNZ: Technically, 45 if you want to add an extra ten-foot side yard setback to either of your side yards.

MR. BRODSKY: Okay.

MR. KUNZ: Yeah.

MR. BRODSKY: And as -- if we can put conditions on this rezoning if we want to? No? Okay. So for me, I mean, my biggest consideration is the height of -- you know, how tall this thing can be. The traffic, I think, is going to be fine. The use is fine for me personally, even as a multi-family in the most -- you know, the highest use case, you know, just the most number of units. But if that's done with a very tall building, that would kind of, you know, be imposing on the land use to the south there, in particular with the R-1, that -- that's my biggest concern. And that's why I ask if we have the ability to -- to put a condition. I would rezone this to R-MF if we could say 25 feet and under. But I'm on the fence, so that's where I'm at.

MS. GEUEA JONES: Commissioner Loe?

MS. LOE: We do not require a plan for rezoning. That's not something we have in our evaluation. We are evaluating it based on the use and allowances allowed in the zoning class being asked for. This came through as an M-C previously, and we did not support that. I support the R-MF. Thank you.

MS. GEUEA JONES: Commissioner Stanton?

MR. STANTON: I stand by the words of wisdom of Ms. Loe and the previous request for M-C. We chewed the applicant alive for those very reasons that it didn't fit, you know. But as staff, eloquently put, that this is basically a market node. I don't know what your actual -- the actual definition you gave, but it fits perfectly in this urban planning world that those gentlemen have spent decades in school learning about market nodes and, you know, marketplace corridors and vision plans and all of that. And that's what this fits. That -- that buffer, that zone of 800, is it -- staff, help me out. Don't make me look crazy on TV.

MR. KUNZ: Eight hundred meters --

MR. STANTON: Eight hundred meter --

MR. KUNZ: -- is typically considered the maximum walking threshold for people.

MR. STANTON: Okay. So we're -- we're talking walkable communities, we're talking walkable neighborhood, we're talking -- you know, we've got a -- we've got a -- the primary focus point is Mozier's grocery store, so we're addressing food deserts. I mean, it's like a textbook urban planning checklist. Am I right, staff? Staff, you're leaving me out here again.

MR. KUNZ: I think it creates good opportunities.

MR. STANTON: Yes. So this applicant, like I said before, did his homework. I hate the unknown, as well. But both parties checked the boxes and we have to kind of look at that information and this fits better than M-C. And, you know, for those who have -- are in opposition, I -- my famous question is, what if -- if you were them, what would be the solution, you know. And he has rights to his property. We didn't like his first proposal, but he has a right to use his property in the best way that we and him -- we can create a win-win to -- to achieve what both sides need to happen. And I think this zoning does it, and it's hard to reject it unless there is a more viable reason to reject it. And your points, rookie, were great. Mr. Williams, they were great, but that changed with this proposal. And it -- everything that you said, you know -- you know, the neighbors had -- had opposition the last time, and blah, blah, blah, blah, blah. What's the alternative to make both sides whole would be my next question, and we know R-1 isn't it. We know M-C isn't it. What would it be to make this whole if you reject this? That would be my counter to any opposition.

MS. GEUEA JONES: Anyone else? If not, I would just add that I think that the owner has demonstrated that R-1 is an underutilization of a piece of property this big, and said, you know, for future planning purposes, this property should be more developed than just with a single -- single-family home. And -- and I think that has been well demonstrated by the applicant through the process with our staff and in the staff report. I also think that multi-family is a good step when you are facing Smith Drive. You

know, if this weren't facing a neighborhood collector, then I might say, oh, you know, you could subdivide it and do six or seven houses, but this is facing a neighborhood collector with commercial around it, with R-MF around it. And I think this gives us an opportunity to have a lower impact on those properties that back to it with some good buffering and -- and, honestly, it's -- it's what I think we asked them to come back with, and -- and I'll be supporting it for sure. Any final comments, or would someone like to make a motion. Commissioner Placier?

MS. PLACIER: My only comment would be about the -- the walkability as a strength of it. This parcel is pretty much cut off from the surroundings because it's only entrance and exit is onto Smith. And so -- and so often happens with R-MF, it's on a busy street and, you know, where are places to walk not just for shopping, but for walking. I suppose you could cross over to Dayspring. I think Westbury has a much better environment for that, you know, just for on-foot kinds of travel. But that was my only concern about it is that it is a sort of cutoff island, and maybe that's the way the surrounding R-1s would like it.

MS. GEUEA JONES: Anyone else? Sorry. Commissioner Brodsky, were you --

MR. BRODSKY: Are you going to make a motion or --

MS. LOE: I was going to make a motion, but if you have another comment?

MR. BRODSKY: I do.

MS. GEUEA JONES: Mr. Brodsky?

MR. BRODSKY: Just looking for clarity from staff or maybe legal, and I'm -- and maybe I'm misreading some things in the ordinance, but it reads to me that if we're looking at any application for approval for a zoning map change, which is what we're talking about here, that we do have the ability to -- to put conditions. Am I just way off base?

MR. ZENNER: Well, I know --

MR. KUNZ: Well -- go ahead, Pat.

MR. ZENNER: The only processes by which you can apply conditions are those that are planned, because that is contractual zoning, and conditional use permits. That is not the case here. This is a straight rezoning request, so there -- there is not the ability to place conditions on straight rezoning. You -- you have the ability and authority to do that when you're doing planned district designations, and with a conditional use, when you're weighing factors that are necessary by which to ensure compatibility of that particular use that's identified as conditional. When we are looking at land use, a straight rezoning request that has principal permitted uses within it, those principal permitted uses are subject to the dimensional standards of the Code, and any other supplemental conditions that are within the Code. So when we drafted these regulations, we gave consideration of all of the -- generally the factors that were believed to be most important, such as screening, landscaping, buffering, light height, parking lot locations, and all of those features. Planned zoning, Mr. Brodsky, unlike when you were here initially, is no longer really a supportable type of action because of the labor-intensive nature of that, and the uncertainty of change. And it's no different than was Mr. Williams' concern is about not having a plan for this particular property at this point. But based on the way that this ordinance is structured, there is no

plan requirement with a straight rezoning request. We rely on all of the requirements within the Code to be properly administered by staff from a technical perspective should the zoning allow it to occur.

MR. BRODSKY: And I totally agree, we do not want to go back to planned world. I'm just reading this -- this language here. Unless otherwise indicated in a specific provision of this chapter, the director, department, board commissioner, counsel, authorized to make decisions under this chapter -- this is all in the zoning stuff -- may approve the application, deny the application, or approve the application subject to conditions.

MR. ZENNER: What section of the Code are you reading from, sir?

MR. BRODSKY: I am under 29-6.3, standard regulatory procedures. And the only reason I ask this, and I don't want to derail -- you know, this is seemingly a relatively simple request, but I would be able to support this if we were to say, conditionally, 25 feet tall or 30 feet tall. But I think a 45-foot-tall multi-family building next to these R-1 parcels is too much for me or not conducive.

MS. GEUEA JONES: While staff is looking at that, I'm just going to weigh in and say I don't want to start going down that path. And so, I mean, you're welcome to make whatever motion and I'll recognize you if legal says we're allowed to, but I would not be supportive of starting to do that on these individual straight zoning things. I think that takes us back to the path that we were prior to the UDC where we're constantly, you know, spot zoning everything with conditions and that sort of thing. I would rather rely on the buffering requirements that we have and that sort of thing. But like I said, you're welcome to, but just while they're looking that up, I thought I would weigh in.

MR. BRODSKY: And I appreciate that. I'm not going to make a motion if there's -- if there's no support for it.

MR. CRAIG: Well, if you -- if you -- Commissioner Brodsky, if you read that, it says -- I see where you're pointing that out, and it says subject to the conditions as in Subsection (e) below states conditions required to bring the development into compliance with the requirements of this chapter. So I don't -- I don't know if that --

MR. BRODSKY: Read the second -- number two there. In addition --

MR. CRAIG: Again, I mean --

MR. ZENNER: It's not -- you know, it's -- it would -- the condition is not necessary in order to bring the application into compliance with any portion of the Code. It is a preference, it is not a requirement. If we needed --

MR. BRODSKY: That's bullet point number one. Bullet point number two --

MR. CRAIG: Right.

MR. BRODSKY: -- says that in addition, we may attach conditions to any permit or approval under this chapter, provided that the condition is required to bring the develop -- proposed development in the application into compliance with The Comprehensive Plan, or to protect public health, safety, or welfare.

MR. ZENNER: That -- one, I will tell you that it's not governed -- height is not governed by the

Comprehensive Plan, and the protection of health -- the public welfare, health, and safety, those are covered by all of our other requirements that deal with stormwater preservation -- stormwater applications, preservation, ensuring we have adequate parking and we're not creating situations in where you're jeopardizing the safety. The structure placed on this property in compliance to the dimensional standards that are authorized, setbacks, plus any other requirements as specified by neighborhood protections were viewed at the time that this ordinance was adopted as being sufficient to ensure the public health, safety, and welfare are met. It would not, because it is not a conditional use, as has been practiced in the 16 years I have worked here, we've never applied conditions to a rezoning request that is outside a planned zoning district in order to facilitate public health, safety, or welfare.

MR. BRODSKY: So staff's reading of public health, safety, and welfare is more like are we creating a safety --

MR. ZENNER: Yes. And because the way that the standards are constructed, we would not say that we are. That's part of why we have our other standards. And for the Comprehensive Plan, it doesn't speak to dimensional aspects of a proposal of this nature. It speaks to how do we coordinate bringing that development allowed within that zoning district into a location, and how does it comport with the overall objectives of the Comprehensive Plan land use elements.

MR. BRODSKY: I appreciate that. Sorry to derail things.

MR. CRAIG: That's fine. And, Commissioner, if you would like me to look into that, I can do that if -- I mean, that's not going to be dispositive for your decision tonight. I can -- I can look into that if you so --

MR. BRODSKY: No need. Thank you.

MR. CRAIG: Thank you.

MS. GEUEA JONES: Anyone else? Commissioner Loe, if you're ready?

MS. LOE: Yes. Just one follow-up comment of the height. As Mr. Zenner identified, the 45 is only allowed if they come in another ten feet, and that's on top of either coming in ten feet with the neighborhood protection standard to go up, or stepping down to 25 feet if there were then a certain --

MR. ZENNER: Twenty-four feet if they're within 25.

MS. LOE: Yeah.

MR. ZENNER: So it only applies to buildings that are 30 feet or greater in height. So without knowing what is being proposed to be constructed, the step-down or setback standards that would generally be applied are unknown at this point. And, Ms. Loe, to your point, we'd have to look at what you're suggesting under the additional ten foot of setback, we'd have to examine that.

MS. LOE: Okay.

MR. ZENNER: I don't believe the double dipping, because that would be double dipping. It would require then basically -- we already have a 15-foot -- well, we have a 25-foot layer from the R-1 --

MS. LOE: Five foot.

MR. ZENNER: -- to begin with. So it would be 35 feet with the standard ten foot for a greater

than 30. It would be 45 feet. I don't believe that that was what was intended.

MS. LOE: Well –

MR. ZENNER: And again, we have never been -- we have never had to deal with that issue up to this point. So I would prefer not to make that as an emphatic statement, that that would be what would be required. That may require some additional evaluation.

MS. LOE: Understood. Just wanted to point out that there are measures in place to deal with height in this exact situation.

MR. ZENNER: And actually it's the site -- well, no. It would be the side and the rear, and I believe you are correct, in the general standard for 30 -- from a 35 to 45. It is -- it's inclusive of both.

MS. GEUEA JONES: Commissioner Williams? Okay. Sorry.

MS. LOE: I'm making a motion as soon as we're done with comments.

MR. WILLIAMS: Okay. I just wanted to clarify. My -- and I appreciate, Commissioner Loe and City staff, pointing out that we don't require a plan to rezone. My -- my point is that the reason I want a plan is because there are potentially uses under -- that are permitted under this zoning that I am not sure would make it proper for the location and the surrounding areas. And so it's not adding a requirement to have someone provide us with a plan, but demonstrating to me that the use of it, because there are perceived uses that in my mind could make it inappropriate for the surrounding area. So that's the intention for my comment. And the other thing that I wanted to reiterate, and I should have said it the first time, just to the applicant is, again, is that my comments here relate strictly to what I believe are trying to be equitable to all the parties involved. And as we said the first time you were here, and I reiterate again, your intended purpose behind all of this, as it was articulated in the original meeting, remains in my mind very admirable. And so it's certainly not -- my view is certainly not intended to try to inhibit what you're trying to accomplish. I'm trying to balance out the equities of -- of the overall situation for everyone. So I just wanted to set that out there, as well.

MS. GEUEA JONES: Any final further comments? Commissioner Loe, I think we're ready.

MS. LOE: Thank you. In the case of 260-2024, move to approve R-MF zoning map amendment.

MR. STANTON: Second.

MS. GEUEA JONES: Approval moved by Commissioner Loe; seconded by Commissioner Stanton. Is there any further discussion on the motion? Seeing none. Commissioner Williams, whenever you're ready.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Ortiz, Ms. Placier, Mr. Stanton, Ms. Geuea Jones, Ms. Loe, Ms. Wilson, Mr. Walters. Voting No: Mr. Williams, Mr. Brodsky. Motion carries 7-2.

MR. WILLIAMS: Seven yeses and two nos, the motion carries.